



# Texas Education Agency

ID# 14728  
MBJ

1701 NORTH CONGRESS AVENUE

AUSTIN, TEXAS 78701-1494

(512) 463-9734

RQ-309

January 23, 1992

Honorable Dan Morales  
Attorney General of Texas  
Supreme Court Building  
P.O. Box 12548  
Austin, Texas 78701

JAN 23 92

Opinion Request: Whether the Proprietary School Tuition Protection Fund as created by Section 32.91 of the Texas Education Code manifests sufficient characteristics of a trust to require interest from the fund to be credited to the Tuition Protection Fund rather than the General Revenue Fund.

Dear General Morales:

Section 32.91 of the Texas Education Code creates a special fund in the state treasury called the Proprietary School Tuition Protection Fund. The State Board of Education collects a fee each year for the Tuition Protection Fund from proprietary schools at the time the schools pay annual renewal fees. The fee paid by the proprietary schools for the fund was assessed in an amount to bring the balance of the fund to \$250,000 by January 1, 1992. Section 32.92 identifies two purposes of the fund: Section 32.92 (e) provides for the payment of refunds to proprietary school students who were prevented from completing their education due to the closing of a proprietary school, and Section 32.92 (b) provides for the reimbursement of expenses incurred by a school to complete training for students who attend that school because of the closure.

Currently, the interest earned by the fund is credited to the General Revenue Fund in accordance with Section 3.042(a) of Article 4393-1, V.T.C.S., as a normal statutory account. However, your office has previously held that Section 3.042(a) does not apply to interest earned on trust

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funds that are not property of the state and which the state treasurer holds as trustee out of the state treasury. Opinions issued by your office have maintained that interest on trust funds become part of the principal and, consequently, part of the fund that generated the interest. Attorney General Opinion JM-549 (1986).

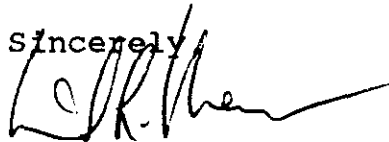
The opinion cited above indicates that in order to be characterized as a trust fund, the fund in question should reflect, among other things, (1) that the fund is administered by a trustee or trustees, (2) that the fund is not granted to the state in its sovereign capacity nor collected for the general operation of state government, and (3) that the fund is invested and spent for specific, limited purposes and for the benefit of a specific group of individuals. Being in the nature of a trust, the fund is then entitled to retain the proceeds from its investment.

The Texas Education Agency takes the position that the Tuition Protection Fund is in the nature of a trust fund. The interest earned by the fund should be credited to the fund for the benefit of the students who are entitled to a refund for tuition paid to a proprietary school that closed, and proprietary schools which complete the students' training.

Section 32.91 identifies the fund as a special fund from which funds are to be appropriated to "Central Education Agency administration" for the purpose outlined in the section. The agency interprets the provision to mean that it is to act as a trustee in administering and distributing funds to students and schools, but does not constitute a grant to the agency or the state in its sovereign capacity. Further, the language of the statute appears to specify that the funds are held for a specific and identifiable class of persons, specifically, students who are entitled to a refund for tuition paid to a proprietary school that closed, and proprietary schools which actually complete student training.

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I would appreciate your advice and counsel in this matter. If you require additional information or assistance, please let me know.

Sincerely,  


Lionel R. Meno,  
Commissioner of Education

cc: Texas Association of Private Schools - Comer Alden and  
Vernon Stewart

Rep. Wilhelmina Delco  
Texas Guaranteed Student Loan Corporation, Joe  
McCormick

Sen. Eddie Lucio

Proprietary School Advisory Commission Members:

Susana Aleman Don S. Henderson

Rosie Bonilla Mona Tinsley

John E. Campbell, Jr. Ellis Tredway

William O. Goodman Carolyn Willard

Steve R. Gregg Kenneth D. Woods

Governor's Office, Lynn Leverty

Comptroller of Public Accounts, T.C. Mallet

Treasury Department, Ann Schwartz